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An Audit Report on

# **The Texas Education Agency's Investigation of the El Paso Independent School District**

August 2013  
Report No. 13-047

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## *Overall Conclusion*

The Texas Education Agency (Agency) failed to perform a thorough and effective investigation of serious cheating allegations in the El Paso Independent School District (EPISD). At the direction of the U.S. Department of Education, the Agency investigated allegations made by an elected official from the El Paso area of wide-ranging cheating in El Paso schools designed to circumvent federal No Child Left Behind requirements (see text box for more background information). After the Agency concluded in 2010 that the allegations of cheating could not be substantiated, two independent investigations confirmed that widespread systemic cheating had, in fact, occurred.

The Agency's investigation was significantly deficient in several areas. Specifically:

- The Agency neglected to investigate all of the cheating allegations.
- The Agency did not travel to El Paso or attempt to interview individuals with knowledge of the cheating schemes, including EPISD staff, an elected official who had filed a written complaint, parents, or students.
- The Agency conducted only a desk review and relied primarily on self-reported information submitted by EPISD.
- The Agency disregarded certain sources of specific, credible information that substantiated the cheating allegations.
- The Agency did not dedicate sufficient resources to its investigation of EPISD and assigned primary responsibility to only one investigator.

### **El Paso Independent School District Investigation Background Information**

In July and August 2010, the U.S. Department of Education directed the Texas Education Agency (Agency) to investigate cheating allegations made by an elected official from the El Paso area against the El Paso Independent School District (EPISD).

The elected official alleged that students at local high schools were prevented from taking the 10th grade federal accountability test through means of transfer, deportation, and inappropriate retention and promotion to avoid enforcement action under the federal No Child Left Behind Act. In Texas, the 10th grade student assessment is the only high school test that counts toward federal accountability under the No Child Left Behind Act.

The Agency presented its findings in two letters dated September 20, 2010, and October 8, 2010, concluding in both cases that the allegations could not be substantiated.

In June 2012, EPISD's superintendent pleaded guilty to federal mail fraud charges and admitted to fraudulently misrepresenting EPISD's adequate yearly progress so that he could receive annual performance bonuses and keep EPISD compliant with No Child Left Behind requirements.

In addition, Agency management failed to provide oversight of the investigation, with no member of management reviewing or approving the investigation's scope, approach, procedures, or findings.

**The Agency lacks a consistent and effective process to conduct investigations concerning manipulation of federal accountability data.**

The Agency does not have sufficient processes and controls in place to effectively identify and investigate possible noncompliance with school accountability requirements. Specifically:

- The Agency's reliance on investigations that school districts and charter schools perform increases the risk that systemic cheating will not be identified.
- The Agency does not analyze data that could identify systemic cheating.
- Several high-level Agency administrators stated that it was not their responsibility to identify and analyze information that may indicate systemic cheating designed to circumvent federal accountability requirements.
- The Agency does not have a process for employees to report monitoring observations, questionable practices, possible cheating, or other concerns to Agency staff who may be able to initiate investigations. In the months preceding and during the Agency's investigation of EPISD, staff in separate Agency divisions received inquiries and anonymous complaints that were individually considered insignificant but in the aggregate could have raised flags of serious and pervasive deficiencies at EPISD.

**The Agency's policies regarding anonymous complaints deter individuals from reporting cheating.**

The Agency does not investigate anonymous complaints except in specific instances, such as when complaints allege violations of test security requirements. While that policy is intended to discourage frivolous and excessive complaints, it also results in the Agency not investigating serious complaints from witnesses who do not want to be identified because they are fearful of retaliation. This was the case for many individuals with knowledge of the cheating schemes at EPISD.

In addition, the Agency lacks an effective complaint management system. Agency-wide monitoring of complaints is a time-consuming, manual process. Agency management does not have a centralized system that it can use to monitor and analyze complaints for potential problems or trends. As a result, the Agency may not address serious complaints in an appropriate or timely manner.

**Summary of Key Recommendations**

The deficiencies in the Agency's investigation of the systemic cheating that occurred in EPISD reflect the overall weaknesses in the Agency's processes for investigating noncompliance with school accountability requirements. Auditors

identified several areas in which the Agency should strengthen those processes. All specific recommendations related to the audit findings in each chapter are listed in Chapter 4 in the Detailed Results section of this report. Some of the key recommendations include:

- The Agency should create an office of complaints, investigations, and school accountability and appoint a senior executive officer to oversee that office. The senior executive officer should approve key decisions related to the overall investigative function, as well as individual investigations.
- The Agency should ensure that it allocates sufficient resources to school accountability investigations.
- The Agency should modify its policies so that it accepts anonymous complaints related to school accountability.
- The Agency should establish an effective automated complaint tracking system.
- The Agency should analyze data it maintains to identify potential systemic cheating designed to circumvent No Child Left Behind requirements.
- The Agency should develop and implement written policies and procedures to:
  - Follow professional standards in performing its investigations.
  - Require investigators to contact and interview individuals identified in complaints selected for investigation.
  - Assess and verify the information (including data and documentation) that it intends to use as evidence for investigative findings.
- The Agency should submit a report on completed investigations to the Governor's Office and substantive legislative committees.
- The Agency should develop a process for sharing information related to school accountability across Agency divisions.
- The Agency should establish an internal hotline and email address to allow Agency employees to anonymously report concerns about violations of school accountability.
- The Agency should ensure that its Web page clearly directs how parents, teachers, school district employees, and members of the general public can report to the Agency issues related to school accountability.

## ***Summary of Management's Response***

Agency management agreed with the recommendations in this report. The Agency's management response is presented in Appendix 6 starting on page 34.

## ***Summary of Information Technology Review***

Auditors performed a limited review of controls over the Content Services system that the Agency uses for tracking complaints. Auditors assessed the reliability of data obtained from Content Services by reviewing information contained in that system, interviewing Agency employees knowledgeable about the data, and comparing information in Content Services to other sources such as hard-copy correspondence. Auditors determined that the data in Content Services was sufficiently reliable for the purposes of this audit.

## ***Summary of Objectives, Scope, and Methodology***

The objectives of this audit were to:

- Determine whether the Agency has effective processes and related controls to investigate possible noncompliance with school accountability requirements.
- Determine why the Agency's investigation of EPISD failed to identify the reporting of inaccurate data and other instances of noncompliance with school accountability requirements.

The scope of this audit included the Agency's investigation of EPISD and related processes and controls from January 2009 through May 2013. Specifically, auditors reviewed correspondence the Agency received from January 1, 2009, through February 28, 2013; complaints the Agency received from March 1, 2013, through April 3, 2013; investigation reports the Agency issued from September 20, 2010, through May 6, 2013; and risk assessments and monitoring reviews the Agency performed from September 1, 2009, through February 28, 2013.

The audit methodology included collecting and reviewing information and documentation related to the Agency's investigation of EPISD and other cheating allegations, performing selected tests and other procedures, analyzing and evaluating results of the tests, and conducting interviews with Agency management and staff. Auditors also performed a site visit to EPISD, conducted interviews, and collected information and documentation related to the cheating allegations. Auditors also performed a limited review of the controls over the Agency's Content Services system, which the Agency uses to track complaint information, by reviewing information contained in that system, interviewing entity personnel knowledgeable about the data, and comparing information in that system to other sources such as hard-copy correspondence. Auditors determined

that the data in Content Services was sufficiently reliable for the purposes of this audit.

Auditors communicated other, less significant issues related to retention of documentation and management approval of investigative procedures to Agency management separately in writing.

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# Detailed Results

## Introduction

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During the summer of 2010, the U.S. Department of Education received information from an elected official from the El Paso area alleging that serious, systemic cheating was occurring in the El Paso Independent School District (EPISD). The U.S. Department of Education directed the Texas Education Agency (Agency) to investigate the allegations.

### Adequate Yearly Progress

The No Child Left Behind Act of 2001 is the most recent reauthorization amending the Elementary and Secondary Education Act of 1965. States are required to implement a statewide accountability system based on annual academic assessments that demonstrates “adequate yearly progress.” Each state determines its own definition of adequate yearly progress with U.S. Department of Education approval.

For Texas, adequate yearly progress is based primarily on the State’s academic assessments, such as the Texas Assessment of Knowledge and Skills (TAKS) and State of Texas Assessments of Academic Readiness (STAAR) tests. To meet adequate yearly progress levels, school districts and campuses must meet minimum performance and participation standards on academic assessments for grades 3 through 8 and grade 10. That is measured for all students and for certain student groups that meet minimum size requirements. Student groups include: African-American, Hispanic, white, economically disadvantaged, special education, and limited English proficiency. Additionally, all school districts and campuses must meet minimum high school graduation and attendance rates.

Sources: The U.S. Department of Education and the Agency.

The elected official alleged that EPISD administrators intentionally prevented students from taking the 10th grade academic assessment so that EPISD would meet adequate yearly progress levels and avoid enforcement action under the federal No Child Left Behind Act (see text box for more information about adequate yearly progress levels). In Texas, the 10th grade student assessment is the only high school test that counts toward federal accountability under the No Child Left Behind Act. The cheating was alleged to be most prevalent at Bowie High School, but cheating also was alleged to have occurred at other high schools that were low-performing or had large populations of limited English proficiency students.

The Agency concluded that there was insufficient evidence to substantiate the allegations of cheating at EPISD, as the Agency reported in two letters of findings dated September 20, 2010, and October 8, 2010. The elected official appealed both of the Agency’s letters of findings to the U.S. Department of Education in the fall of 2010. The

appeals asserted that the Agency did not speak to any witnesses, refused to investigate certain allegations, severely limited the scope of its investigation, and may have been complicit in the actions of EPISD administrators.

The U.S. Department of Education’s Office of Inspector General initiated its own audit of EPISD in December 2010 and released its final report in June 2013. The U.S. Department of Education determined that the Agency had violated the academic and assessment requirements of the federal Elementary and Secondary Education Act. The Agency did not ensure that students who bypassed the 10th grade took a test that counted toward adequate yearly progress. According to the U.S. Department of Education, not allowing students to participate in a test that counts toward adequate yearly progress violates the Elementary and Secondary Education Act and does not provide a full and accurate representation of Texas students’ progress at the high school level. The U.S. Department of Education stated that, in addition to Bowie and

Coronado high schools, this could have occurred at other El Paso and Texas high schools.

## ***The Agency Did Not Conduct a Thorough and Effective Investigation of Cheating Allegations at EPISD***

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### **The Agency's Investigative Functions**

The Agency is the State's executive agency responsible for guiding and monitoring certain activities related to public education in Texas. During the 2011-2012 school year, the Agency served nearly 5 million students, 1,029 independent school districts, and 198 charter districts. The Agency had 826 full-time equivalent employees authorized by the General Appropriations Act for the 2012-2013 biennium, but it had a staff of approximately 700 FTEs, including 2 internal auditors for fiscal year 2012. Several Agency divisions perform investigative functions pertaining to federal and state program compliance, school finance, statewide assessment security, and educator certification. The Agency's Office of Correspondence and Special Investigations (formerly the Office of Inspector General and Special Investigations) conducts investigations concerning federal accountability. The Office of Correspondence and Special Investigations comprises only one investigator who reports directly to the Agency's chief deputy commissioner.

Sources: The Agency and the Sunset Advisory Commission.

The Agency failed to perform a thorough and effective investigation of serious cheating allegations at EPISD. As a result, the Agency did not identify the cheating schemes in place at EPISD. Specifically:

- The Agency neglected to address all aspects of the cheating allegations that were within its investigative authority.
- The Agency did not bring any matters that it determined to be outside of its investigative authority to the attention of the EPISD board of trustees or appropriate external authorities for further investigation.
- The Agency failed to verify and effectively analyze data it received, and it disregarded certain sources of information that could have substantiated the cheating allegations.
- The Agency did not perform sufficient investigative procedures to support its conclusions.
- The Agency conducted only a desk review of information submitted and did not attempt to obtain additional information beyond what was submitted. Additionally, the Agency's investigator did not travel to El Paso or contact individuals who had knowledge of the cheating schemes.
- Although executive management and staff at the Agency had knowledge of the serious nature of the allegations and potential deficiencies at EPISD, the Agency did not dedicate sufficient resources to its investigation.
- Agency management assigned the responsibility for performing the investigation to one investigator and did not require that investigator to adhere to the Agency's documented procedures for conducting investigations.

## The Agency Neglected to Investigate All Aspects of the Cheating Allegations That Were Within Its Investigative Authority

### EPISD Complaint Allegations

The elected official's complaints to the Agency and the U.S. Department of Education included statements alleging that the Agency had conflicts of interest with EPISD and may have been complicit in the actions of EPISD administrators. The Agency's investigator stated to auditors that the Agency initially withdrew one of the elected official's complaint letters because the allegations would have required the Agency to investigate itself. However, the U.S. Department of Education directed the Agency to perform an investigation anyway.

### Allegations Not Investigated by the Agency

The Agency determined that the following five allegations were outside of its investigative authority:

- EPISD administrators used software to profile and target students who were not likely to pass the 10th grade academic assessments.
- EPISD reclassified targeted students to remove those students from their class cohort for the taking of the 10th grade academic assessments.
- EPISD kept back targeted students in the 9th grade so that they would not take the 10th grade academic assessments in the spring semester of their sophomore year.
- EPISD moved targeted students from the 9th grade directly into the 11th grade to bypass the 10th grade academic assessments.
- EPISD transferred targeted students out of their high schools to charter schools or schools that had different feeder patterns.

Source: The Agency.

The U.S. Department of Education directed the Agency to investigate 10 specific allegations made by an elected official in two letters that the Agency received on July 7, 2010, and August 20, 2010. The Agency considered only the allegations that the U.S. Department of Education directed it to investigate when it planned its investigation's scope and procedures, even though the Agency was aware of numerous other allegations that the elected official made against EPISD (see text box for more information about the EPISD complaint allegations).

Those other allegations included, but were not limited to: inappropriate use of credit recovery programs<sup>1</sup>, forged attendance records, misclassification of special education and limited English proficiency students, a culture of intimidation, firing of whistleblowers, and destruction of documents by administrators. Many of those allegations also had been publicized in El Paso news and media outlets; however, the Agency did not include any of those additional allegations in its investigation. Furthermore, the Agency limited the scope of its investigation to Bowie High School, despite a written complaint from the elected official sent directly to the Agency requesting that it investigate additional EPISD schools. The Agency's investigator stated that only Bowie High School was included because the elected official had not identified any other schools by name in the written complaints.

The Agency's former commissioner of education assigned responsibility for fulfilling the U.S. Department of Education directives to the Agency's Office of Inspector General and Special Investigations, which comprised only one investigator who reported directly to the Agency's former commissioner of education. Upon reviewing the 10 allegations that the U.S. Department of Education had directed the Agency to investigate, the Agency investigator determined that 5 of the 10 allegations were outside of the Agency's investigative

authority (see text box for a list of the 5 allegations determined to be outside of the Agency's authority).

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<sup>1</sup> Those programs included one-day "turbo-mesters" or "mini-mesters," which allowed students to make up a semester's worth of credit in one day for the purposes of graduating.

#### Monitoring Authority

Texas Education Code, Section 7.028, states that the Agency may monitor compliance with requirements applicable to a program provided by a school district as necessary to ensure: (1) compliance with federal law and regulations and (2) data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability.

7.028 (see text box for more information about the Agency's monitoring authority).

The Agency's processes did not require a formal review of either the investigation's scope or the Agency investigator's determinations of the Agency's investigative authority. As a result, no member of Agency management or legal staff reviewed the investigator's planned investigation scope or determination of investigative authority related to the EPISD allegations. Additionally, none of the allegations that the Agency determined to be outside of its investigative authority were brought to the attention of the EPISD board of trustees, nor were they referred to external authorities for further investigation.

#### Allegations Investigated by the Agency

The Agency determined that the following allegations were within its investigative authority:

- EPISD "disappeared" students at Bowie High School through means of transfer, deportation, and inappropriate retention and promotion.
- Seniors who fail the academic assessment are enrolled in "online accredited" schools that operate outside of the state assessment system so that no academic assessment scores are recorded for those students.
- Seniors who lack required attendance credits have transcripts changed to make them eligible for graduation.
- During testing week, squads of truant officers are dispatched to the homes of targeted students to inform them to stay away from school on testing day.
- Other students have tests "picked up" due to allegations of cheating or failure to follow protocols so that those tests are not counted in academic assessment scores.

Source: The Agency.

#### Chapter 1-B

#### The Agency Performed a Deficient Investigation of the Cheating Allegations

As discussed in Chapter 1-A, the Agency asserted that it would investigate 5 of the 10 allegations that the U.S. Department of Education directed it to investigate (see text box for a list of the 5 allegations that the Agency determined were within its investigative authority). However, the Agency did not exercise due diligence when conducting its investigation, and it concluded that there was insufficient evidence to substantiate the five allegations it did investigate.

Auditors determined that the Agency's investigation was deficient in several areas. Specifically, the Agency did not verify and effectively analyze data it received, disregarded certain sources of information that could have substantiated the cheating allegations, and did not perform sufficient investigative procedures to support its conclusions. Additionally, Agency management did not require the investigator to adhere to documented procedures for conducting investigations.

The Agency did not verify and effectively analyze data it received for its investigation. The Agency did not verify the accuracy of data it used to support its investigative conclusions and failed to recognize that data showed evidence of potential manipulation of student records at Bowie High School. The data indicated that 56 percent of the 2007 freshman class did not advance to the 10th grade and, therefore, did not take the 10th grade academic assessment during the spring of 2009. Although 381 students were enrolled in the 9th grade in the fall of 2007, only 168 (44 percent) were enrolled in the 10th grade the following school year. The remaining students were held back in 9th grade, advanced to the 11th grade or 12th grade, or left the school.

The Agency's Data Development, Analysis and Research staff determined that the increase in the number of students who did not advance to the 10th

#### Cheating Schemes at EPISD

In 2013, two independent investigative reports confirmed that EPISD administrators prevented students from taking the 10th grade academic assessments and allowed students to graduate from high school prematurely by implementing the following cheating schemes:

- Implementing policies for student promotion and retention and for the treatment of migrant students that prevented certain students from advancing to the 10th grade.
- Improperly reclassifying students to avoid the 10th grade academic assessment.
- Manipulating the limited English proficiency testing subpopulation.
- Altering student transcripts and attendance records.
- Offering aggressive credit recovery programs.

Sources: *El Paso Independent School District's Compliance With the Accountability and Academic Assessment Requirements of the Elementary and Secondary Education Act of 1965*, U.S. Department of Education Report No. ED-OIG/A06L0001, June 2013; and *Final Report of Investigation into Alleged Cheating Scandal at El Paso Independent School District*, Weaver and Tidwell, LLP, April 1, 2013.

grade was caused by EPISD's implementation of a new promotion and retention policy. However, the Agency did not recognize that the policy was designed to prevent students from taking 10th grade academic assessments by requiring students to earn additional credits in order to advance to the 10th grade. Additionally, Agency staff interpreted the allegation of "disappeared" students to refer to students not being tracked in the Agency's student data systems, rather than students being intentionally reclassified or transferred out of Bowie High School. As a result, the Agency tracked the enrollment status of Bowie High School students in its information technology systems; however, the Agency did not try to determine whether the classification and enrollment status of those students were appropriate (see text box for a list of cheating schemes at EPISD).

The Agency requested that EPISD provide information for its investigation but did not specify the time frame and campuses to be included in EPISD's submission. As a result, EPISD submitted self-reported Bowie High School attendance rates for the incorrect testing year. The Agency did not verify the accuracy of the self-reported data, nor did it recognize that the information received was for the

incorrect testing year. The Agency also reviewed EPISD-submitted documentation for students who left Bowie High School in 2007 or 2008, but it did not perform any procedures to determine whether the documentation was complete.

The Agency disregarded certain sources of information that could have substantiated the cheating allegations. The Agency received correspondence from two anonymous complainants between July 2009 and June 2010 that supported the elected official's allegations of cheating at EPISD. The complaints alleged that EPISD administrators had changed student answers during the 2009

spring testing (TAKS), eliminated the limited English proficient student population so EPISD would meet adequate yearly progress levels, and changed student grades to improve graduation rates. One complaint alleged that EPISD's superintendent and director of priority schools<sup>2</sup> had knowledge of those actions. Although the complaints contained specific, compelling information, the Agency's investigator concluded that the complaints did not contain sufficient information to meet the Agency's requirements for an investigation.

Auditors interviewed former and current employees, administrators, and board members at EPISD. Certain individuals from El Paso told auditors that they had attempted to report concerns to the Agency in 2009 and 2010 that should have raised flags of serious and pervasive deficiencies at EPISD. Auditors confirmed that employees in the Agency's Student Assessment Division and Program Monitoring and Interventions Division, as well as the Office of Inspector General and Special Investigations, had contact with three of those individuals. However, auditors could not verify the specific content of all phone and email communications because the Agency did not retain any associated documentation.

In addition, in 2009 and 2010, the Agency's former commissioner of education and deputy commissioner of school district leadership and educator quality were in communication with EPISD's superintendent and other top EPISD administrators, as well as the local elected official. As a result, the Agency's former commissioner of education and deputy commissioner should have been informed of the serious nature of the allegations against EPISD prior to any investigation. However, that communication—which included emails, letters, phone calls, and even a meeting with EPISD administrators held at Agency offices in Austin—was not considered in the Agency's investigation of EPISD. Again, auditors could not verify the specific content of all communication because the Agency did not retain any associated documentation.

EPISD notified the Agency in June 2010, that it was performing an internal audit of transcript irregularities at Bowie High School. During its investigation of EPISD, the Agency did not inquire about the progress or outcome of the EPISD internal audit. Agency staff failed to recognize that the transcript irregularities were associated with a scheme to prevent students from taking the 10th grade academic assessment. EPISD completed its audit work in August 2010 but did not provide the final report to the Agency until May 2012. The internal audit identified significant errors related to assignments on student transcripts of grade level, course credit, and course grades that occurred during the 2009-2010 school year. Had the Agency

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<sup>2</sup> Priority schools are schools that missed adequate yearly progress for two consecutive years and were in need of improvement.

inquired about the status of the internal audit, it could have obtained information to assist in its investigation of cheating in EPISD.

The Agency did not perform sufficient investigative procedures to support its conclusions. The Agency conducted a desk review of information submitted by EPISD and the elected official but did not attempt to obtain additional information beyond what was submitted.

The Agency's investigator did not travel to El Paso or interview individuals who had knowledge of the cheating schemes, including EPISD staff, the elected official, parents, and students. Auditors interviewed former and current staff, administrators, and board members at EPISD. According to EPISD staff, certain administrators controlled and filtered information that reached the Agency during its investigation. Several individuals asserted to auditors that they had relevant information that they would have shared with the Agency at the time of its investigation if they had been asked. Through discussion with those individuals, auditors also identified the following investigative procedures that the Agency could have performed:

- Reviewing and comparing hard-copy documentation available in a student's cumulative folder to electronic records to identify evidence of transcript manipulation.
- Performing a comparison of dropout data from year to year and school to school to reveal data discrepancies.
- Identify students who did not take the 10th grade student assessments.
- Coordinating with EPISD's Internal Audit Department to determine the progress and outcome of its audit on student transcript irregularities.
- Interviewing parents, teachers, and administrators at EPISD.

Additionally, the Agency reviewed only relevant EPISD policies but did not perform any investigative procedures to support its conclusion that there was insufficient evidence to substantiate the following allegations:

- Seniors who fail the academic assessment are enrolled in "online accredited" schools that operate outside the state assessment system so that no academic assessment scores are recorded for those students.
- Seniors who lack required attendance credits have transcripts changed to make them eligible for graduation.

Agency management did not require investigators to adhere to its documented procedures for conducting investigations. At the time of the investigation, the Agency had an *Investigation Manual* available to its Office of Inspector General and Special Investigations; however, Agency management did not require investigators to adhere to the *Investigation Manual*. The manual



contained provisions that required investigators to (1) document an investigative plan to help ensure that an investigation is thorough and (2) obtain management approval of the investigative plan. The manual also required investigators to:

- Consider the quality of evidence in determining its value to the investigation. Qualities to consider include relevance, materiality, competence, and authenticity.
- Interview all key individuals, obtain all pertinent documents, and support all conclusions with evidence.
- Obtain internal review of preliminary report drafts by members of management, legal services, and the program division staff who oversee the subject matter under investigation.

The Agency did not document an investigative plan or retain documentation to support that the procedures described in the *Investigation Manual* had been followed. There is no documentation that any member of the Agency's executive management reviewed the investigation procedures or findings to ensure that the investigation was thorough and that all conclusions were sufficiently supported.

#### Chapter 1-C

### **The Agency Did Not Dedicate Sufficient Resources to Its Investigation of EPISD**

The Agency did not dedicate sufficient resources to conduct a thorough and effective investigation of EPISD. Specifically:

- The former commissioner of education assigned responsibility for performing the investigation to one investigator and did not provide sufficient oversight to ensure that the investigation was thorough and effective.
- The investigation was conducted as a desk review. The Agency's investigator did not request, nor did the Agency allocate, specific, budgeted funds for travel to El Paso or for other expenses related to conducting an onsite investigation.
- The investigator assigned to the Agency's investigation of EPISD was sufficiently qualified and experienced to conduct the investigation. In addition, the Agency had knowledgeable staff available to assist in a comprehensive investigation of EPISD. However, the investigator consulted only with subject-matter experts within the Agency for specific information requests and did not fully apprise those subject matter experts about all aspects of the investigation. Further, the investigator did not include those subject matter experts in the process of drafting the

investigation findings. Most Agency employees that auditors interviewed could not recall detailed information about their contributions to the investigation.

## ***The Agency Does Not Have Effective Processes to Identify, Conduct, or Investigate Noncompliance with School Accountability Requirements***

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The Agency does not have sufficient processes and controls in place to effectively identify and investigate possible noncompliance with school accountability requirements. Specifically:

- The Agency's reliance on investigations that school districts and charter schools perform increases the risk that systemic cheating will not be identified.
- The Agency lacks a consistent and defined process for performing investigations and does not have comprehensive procedures that guide investigators in conducting consistent and thorough investigations.
- The Agency's processes for monitoring school districts and charter schools are not designed to identify systemic cheating.
- The Agency does not have a process in place to ensure that monitoring information is shared across Agency divisions. The lack of a process to share information across Agency divisions limits its ability to provide effective and comprehensive monitoring of school districts and charter schools and inhibits the timely identification of cheating schemes.

### **Chapter 2-A**

## **The Agency Overly Relies on School Districts' and Charter Schools' Investigations of Themselves**

For complaints alleging noncompliance with provisions of the federal No Child Left Behind Act, the Agency requires complainants to exhaust every effort to resolve the complaints with the school district or charter school before the Agency will consider initiating an investigation. By requiring school district and charter school officials to audit and investigate themselves, the Agency limits its ability to identify systemic cheating because the process does not adequately safeguard against conflicts of interest. This was the situation in EPISD, where district and school administrators had implemented the cheating scheme.

If the Agency is considering conducting an investigation, school districts and charter schools that are the subjects of complaints may be required to submit to the Agency any information and documentation used in conducting their local audit or investigation. The Agency then relies on that information to determine the scope and procedures for its own investigation. However, the Agency does not consistently verify that the information in local audits and investigations is objective, complete, and accurate. If a school district or charter school does not conduct its own local audit or investigation and submit

information to the Agency, the Agency may not conduct an investigation at all.

Chapter 2-B

## The Agency Lacks Consistent and Defined Investigation Processes

Auditors compared the Agency's investigation of EPISD with three other Agency investigations of alleged manipulation of federal accountability data conducted from 2009 through 2013 (see Appendix 3 for more information about other Agency investigations). That analysis showed that the Agency lacks a consistent and defined process for performing investigations. Examples of some areas in which the Agency is inconsistent include:

- Selection of investigations type. Two of the four investigations were conducted as desk reviews and two investigations were conducted on site.
- Application of its investigation procedures. For three of the four investigations, the Agency made inquiries with school personnel and conducted either phone or in-person interviews. For the investigation of EPISD, the Agency did not contact any local personnel.
- Time frames needed to conduct investigations. The time frame of the Agency's investigations ranged from nearly three months to nearly three years for the four investigations auditors reviewed.
- Internal reviews of investigation findings and conclusions. For three of the four investigations, the Agency conducted reviews of preliminary findings prior to issuing its reports; however, for the investigation of EPISD, the Agency did not perform any review of findings and conclusions.
- Issuance of recommendations, corrective actions, or sanctions for investigations with similar findings. For two of the four investigations, the Agency recommended detailed corrective actions. For the third investigation, the Agency notified the U.S. Department of Education and the Dallas County District Attorney's Office about possible violations. For the investigation of EPISD, the Agency recommended that EPISD review and revise, if necessary, certain policies to ensure accurate reporting of data.

The Agency lacks comprehensive written procedures for investigating alleged manipulation of federal accountability data. From 2009 through 2011, as discussed in Chapter 1, the Agency's Office of Inspector General had an *Investigation Manual* that provided comprehensive guidance for conducting investigations. The Agency replaced that manual in 2011 to align with the structure and function of its newly created Office of Correspondence and Special Investigations. However, the revised manual does not contain comprehensive procedures to guide investigators in conducting consistent and thorough investigations. The revised manual does not provide guidance on the following topics:

- Determination of whether to conduct an onsite investigation or a desk review.
- Procedures to be performed when conducting an investigation, including the types of documentation to review or individuals to interview.
- Evaluation of the quality of evidence obtained.
- Content to be documented in an investigation report, such as the methodology and procedures used for the investigation and supporting evidence for the findings, conclusions, and recommendations.
- Internal review of planned investigation procedures and findings, including from whom internal reviews should be obtained (for example, from management, legal, and/or program staff).
- Communication of preliminary and final investigation results to appropriate internal and external parties.

#### Chapter 2-C

### The Agency's Monitoring Processes Are Not Designed to Identify Cheating

The Agency's monitoring processes are not designed to identify systemic cheating and lack flexibility to adequately consider indicators of potential cheating and manipulation to avoid No Child Left Behind requirements. The data that the Agency uses for analyzing school districts' and charter schools' performance would not have identified indicators of the type of cheating that occurred in EPISD.

#### Monitoring Processes

The Agency's Performance Reporting Division staff are responsible for developing and maintaining the Performance-based Monitoring Analysis System, which is an automated data system that reports annually on the performance of school districts and charter schools in selected program areas. Those areas include:

- Bilingual education/English as a second language.
- Career and technical education.
- Special education.
- Certain title programs under the No Child Left Behind Act.

The Agency's Performance Reporting Division staff are also responsible for developing and reporting on a variety of data validation indicators, including leaver/dropout records, discipline data, and student assessment data.

Source: The Agency.

The data that the Agency uses to analyze school performance is not designed to identify cheating in school districts and charter schools. The Agency's Performance Reporting Division staff annually develops both the Performance –Based Monitoring Analysis System, which is used to monitor the performance of students served in certain state and federal programs, as well as data validation indicators that are required by state or federal statutes (see text box for more information). However, Performance Reporting Division staff do not perform the data analysis that would have indicated the type of cheating that occurred in EPISD. By performing additional types of analysis, such as analyzing changes in testing subpopulations, the Agency may have identified the cheating at EPISD and other school districts in which cheating has since been confirmed through local audits and investigations.

In the Canutillo School District, which is also in the El Paso area, internal auditors confirmed in a December 2012 audit that the school district manipulated students' grade classifications to avoid the 10th grade accountability year. State auditors requested enrollment data from the Agency for Canutillo High School for the 2008 through 2011 school years. The Agency's data showed that more than 30 percent of the students who entered 9th grade in the fall of 2008 and fall of 2009 did not advance to the 10th grade the following school years. Data that shows more than 30 percent of students did not progress to the 10th grade indicates that manipulation to avoid No Child Left Behind assessments may have occurred. However, the Agency's Performance Reporting Division staff do not analyze student grade progression and, therefore, would not identify that type of manipulation through annual data monitoring processes.

Auditors also determined that the Agency failed to notice that one charter school in the Dallas area reclassified all 10th grade students to either 9th grade or 11th grade and, therefore, the school did not administer any 10th grade state assessments to students in the spring of 2009. In Texas, the 10th grade student assessment is the only high school assessment that counts toward a school's performance rating for No Child Left Behind requirements. Neither the Agency's Performance Reporting staff nor its Student Assessment staff perform data analysis to identify school districts or charter schools that manipulate student grade classifications to avoid student assessments that significantly affect school accountability ratings. (See Appendix 3 for additional information about that charter school and the cheating that was later identified.)

The Agency's risk analysis processes and monitoring reviews are not designed to identify fraud or cheating. The Agency's Program Monitoring and Interventions staff perform ongoing monitoring of school districts and charter schools based on an annual risk assessment that the Agency uses to identify and select at least 25 school districts or charter schools for an onsite monitoring visit and a select number for desk reviews. However, that risk assessment does not consider any risk for fraud or cheating. The Agency's monitoring plans are based solely on the data that its Performance Reporting Division staff develop each fiscal year and does not encourage Agency employees to initiate investigations based on observations and professional judgment (see Chapter 2-D for more information).

In addition, the Agency's monitoring reviews are not designed to identify systemic cheating. For example, from October 2010 to February 2013, the Agency's Program Monitoring and Interventions staff performed four desk reviews and conducted two onsite monitoring visits at EPISD. However, based on those reviews, the Agency did not identify any evidence of the cheating schemes at EPISD.

Auditors interviewed high-level administrators of two Agency divisions with monitoring responsibilities related to compliance with the No Child Left Behind Act. Those administrators stated that it was not their responsibility to identify and analyze information that may indicate that systemic cheating and manipulation may be occurring. Instead, the administrators interviewed indicated that responsibility remains at the school district level.

#### Chapter 2-D

### **The Agency Does Not Have a Process to Ensure That Monitoring Observations and Potential Concerns Are Shared with Relevant Staff Throughout the Agency**

Even when some Agency staff identify possible patterns indicating cheating may be occurring, the Agency does not have a process for staff to share monitoring observations or potential concerns about cheating with other relevant staff throughout the Agency. The Agency also lacks a channel for its staff to report questionable practices, possible cheating, or other concerns. This limits the Agency's ability to provide effective and comprehensive monitoring of school districts and charter schools and inhibits the early identification of cheating schemes. For example, one Program Monitoring and Interventions employee told auditors that she noticed that all campuses formerly rated as academically unacceptable in the El Paso area were no longer rated as such beginning in 2010. The employee noted that it was suspicious for a district the size of EPISD to have no campuses rated as academically unacceptable. However, that employee stated that she was not able to initiate any actions based on her observations. In addition, the Agency lacks a mechanism for employees to communicate this type of information to Agency staff who may be able to initiate investigations.

The Agency had a Monitoring, Investigations, and Intervention Steering Committee in place from 2004 to 2012 to coordinate monitoring and intervention efforts across Agency divisions. However, the Agency disbanded that committee in September 2012. Agency staff asserted that the EPISD investigation was discussed during committee meetings; however, auditors could not confirm that because the Agency destroyed all records from committee meetings in June 2012.

## ***The Agency's Policies for Anonymous Complaints, Combined With Its Inadequate Complaint Tracking System, Limit Its Ability to Effectively Investigate Complaints***

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The Agency's policies for responding to anonymous complaints resulted in it dismissing legitimate complaints related to the cheating schemes in EPISD. In addition, the Agency's complaint tracking system does not have the capability to effectively meet the needs for an Agency-wide complaint tracking and management system.

The Agency's policies for investigating complaints deter individuals from reporting cheating. The Agency does not investigate anonymous complaints except in specific instances, such as when there are complaints alleging violations of test security requirements. While that policy is intended to discourage frivolous and excessive complaints, it also results in the Agency not investigating serious complaints from witnesses who do not want to be identified because they are fearful of retaliation. That was the case for many individuals with knowledge of the cheating schemes at EPISD. For example:

- One EPISD employee notified Agency employees in the Student Assessment Division and the Office of Inspector General and Special Investigations that students at EPISD were being reclassified at mid-year to prevent some students from taking the 10th grade academic assessment.
- A former EPISD employee contacted the Agency's Program Monitoring and Interventions Division to report that EPISD administrators had forged student documents, manipulated limited English proficiency and special education subpopulations, and filtered information provided to the Agency to avoid No Child Left Behind requirements.

In both of those cases, the Agency instructed the individuals that they would have to put their complaints in writing before it would consider investigating the allegations. Because of the Agency's policy of not investigating anonymous complaints, both individuals told auditors they did not file written complaints because they were afraid of retaliation.

### **Content Services**

The Agency purchased the Content Services system in 2004 to use as its official electronic repository for Agency records. Content Services is very limited in its ability to be customized. In addition, the vendor no longer supports Content Services. One to two Agency information technology employees support Content Services for all of the Agency.

Source: The Agency.

The Agency lacks an effective complaint management system. The Agency uses Content Services as a record repository for complaints (see text box). However, Content Services is not intended to be used as a complaint tracking system and lacks the capabilities to effectively manage the complaints the Agency receives and processes. Content Services cannot easily produce a report summarizing the nature and volume of complaints received and the status of the complaints. As a result, Agency-wide monitoring of complaints is a time-consuming, manual process, and the Agency may not address serious complaints in



an appropriate or timely manner.

In addition, not all Agency divisions are required to use Content Services and may choose to maintain independent records management systems and procedures. As a result, Agency management does not have a centralized system that it can use to monitor and analyze complaints for potential problems or trends.

## ***Recommendations for Strengthening the Agency's Investigative Function***

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The deficiencies in the Agency's investigation of the systemic cheating that occurred in EPISD reflect the weaknesses in the Agency's investigative processes for school accountability overall. Auditors identified several areas in which the Agency should strengthen its processes for school accountability investigations: management oversight and organization, complaint processing and tracking, monitoring and data analysis, policies and procedures, and communication. Specific recommendations are listed for each of those areas below.

### **Management Oversight and Organization**

The Agency should:

- Create an office of complaints, investigations, and school accountability to accept complaints, screen complaints for materiality and substance, and investigate complaints approved by the senior executive officer.
- Appoint a senior executive officer to oversee the new office of complaints, investigations, and school accountability. That senior executive officer should be required to:
  - ♦ Provide written approval of decisions not to investigate complaints regarding school accountability.
  - ♦ Ensure that all complaints determined to be outside of the Agency's investigative authority are referred to external authorities as appropriate.
  - ♦ Review and approve the Agency's investigation policies and procedures to provide consistent investigation processes.
  - ♦ For each investigation, review and provide written approval of:
    - The scope and specific planned investigative procedures.
    - The investigation's findings.
    - Draft investigative reports.
- Require the general counsel to provide written approval for all determinations that a complaint is outside of the Agency's investigative authority.
- Ensure that the office of complaints, investigations, and school accountability has sufficient resources, including staff, travel budget, and

training, to conduct comprehensive investigations of noncompliance with school accountability requirements.

#### Complaint Processing and Tracking

The Agency should:

- Modify its policies so that it accepts anonymous complaints related to school accountability.
- Establish an effective automated complaint tracking system that facilitates the Agency's ability to accept, screen, review, and track complaints and require all Agency divisions to use that same complaint tracking system.
- Analyze the nature and volume of complaints the Agency receives to identify trends and patterns related to noncompliance with student accountability requirements.

#### Monitoring and Data Analysis

The Agency should:

- Analyze data it maintains to identify potential systemic cheating designed to circumvent federal accountability requirements, such as analyzing anomalies in student grade progression and No Child Left Behind subpopulations at the school and district levels.
- Include risks identified through data analysis, monitoring observations, or complaint allegations in its risk assessment process for selecting school districts and charter schools for monitoring reviews.

#### Policies and Procedures

The Agency should develop and implement written policies and procedures for its investigative processes. Those policies and procedures should:

- Follow professional standards for performing investigations, such as the *Principles and Standards for Offices of Inspector General* or generally accepted government auditing standards.
- Establish documented criteria to determine whether to conduct an investigation on site or as a desk review.
- For complaints accepted for investigation, require investigators to contact and interview individuals identified in the complaint.
- Require the Agency to assess and verify the information (including data and documentation) that it intends to use as evidence for investigative findings.

- Require investigators to assess the sufficiency, validity, and objectivity of audits and investigations that school districts and charter schools perform.
- Require its investigators to follow up on the status of local audits and investigations at school districts and charter schools.
- Require investigators to maintain a comprehensive file for each investigation and retain documentation to support decisions regarding each investigation.

#### Communication

The Agency should:

- Require the senior executive officer who oversees the new office of complaints, investigations, and school accountability to submit a report on completed investigations to the Governor's Office and substantive legislative committees.
- Develop a process to facilitate the sharing of monitoring information across Agency divisions before and during investigations to ensure that investigations benefit from the knowledge and professional judgment of experienced staff.
- Establish an internal hotline and email address to allow Agency employees to anonymously report concerns about violations of school accountability.
- Ensure that its Web page clearly directs how parents, teachers, school district employees, and members of the general public can report to the Agency issues related to school accountability.

# Appendices

## Appendix 1

### ***Objectives, Scope, and Methodology***

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#### **Objectives**

The objectives of this audit were to:

- Determine whether the Texas Education Agency (Agency) has effective processes and related controls to investigate possible noncompliance with school accountability requirements.
- Determine why the Agency's investigation of the El Paso Independent School District (EPISD) failed to identify the reporting of inaccurate data and other instances of noncompliance with school accountability requirements.

#### **Scope**

The scope of this audit included the Agency's investigation of EPISD and related processes and controls from January 2009 through May 2013. Specifically, auditors reviewed correspondence the Agency received from January 1, 2009, through February 28, 2013; complaints the Agency received from March 1, 2013, through April 3, 2013; investigation reports the Agency issued from September 20, 2010, through May 6, 2013; and risk assessments and monitoring reviews the Agency performed from September 1, 2009, through February 28, 2013.

#### **Methodology**

The audit methodology included collecting and reviewing information and documentation related to the Agency's investigation of EPISD and other cheating allegations, performing selected tests and other procedures, analyzing and evaluating results of the tests, and conducting interviews with Agency management and staff. Auditors also performed a site visit to EPISD, conducted interviews, and collected information and documentation related to the cheating allegations.

Auditors also performed a limited review of the controls over the Agency's Content Services system, which the Agency uses to track complaint information, by reviewing information contained in that system, interviewing Agency personnel knowledgeable about the data, and comparing information in that system to other sources such as hard-copy correspondence. Auditors determined that the data in Content Services was sufficiently reliable for the purposes of this audit.

Auditors selected nonstatistical samples of correspondence and complaints that the Agency received from March 1, 2013, through April 3, 2013, related to noncompliance with school accountability. The sample items generally were not representative of the entire population and, therefore, it would not be appropriate to extrapolate results to the population.

Information collected and reviewed included the following:

- Agency policies and procedures.
- Agency organizational charts.
- Applicable state and federal requirements.
- Correspondence and complaint data from the Agency's Content Services system.
- Investigation documentation, including information submitted to the Agency and other correspondence, internal working papers, and investigative reports.
- Employee education and qualifications.
- The Agency's Program Monitoring and Interventions Division's risk assessment spreadsheets.
- The Agency's Program Monitoring and Interventions Division's monitoring reports for EPISD.
- Enrollment and attendance data.

Procedures and tests conducted included the following:

- Interviewed management and staff at the Agency and EPISD.
- Interviewed external parties with knowledge of the Agency's investigation of EPISD.
- Examined and analyzed documentation of the Agency's investigation of EPISD.
- Compared the scope, resources, and procedures used to conduct the investigation of EPISD to other investigations.
- Evaluated the Agency's processes for performing analysis of data that school districts and charter schools report.
- Examined annual risk assessments and periodic monitoring reports that the Agency prepared.

- Conducted a walkthrough of the Agency's correspondence and complaint intake processes.
- Traced a nonstatistical sample of complaints received by the Agency to its Content Services system.
- Analyzed enrollment and attendance data for an El Paso area high school identified as having cheating similar to cheating at EPISD.

Criteria used included the following:

- Texas Education Code, Chapters 7, 11, and 39.
- Title 19, Texas Administrative Code, Chapters 97 and 249.
- No Child Left Behind Act of 2001, Section 9304 (Title 20, United States Code, Section 7844).
- Agency policies and procedures including:
  - ♦ Agency Operating Procedures 03.01 and 04.01.
  - ♦ Office of Inspector General *Investigation Manual*.
  - ♦ Office of Correspondence and Special Investigations Complaint Investigation procedures.
  - ♦ State-level No Child Left Behind complaint procedures.
- User manual for the Content Services system.
- Data validation monitoring system guidance for local education agencies.
- Program monitoring and interventions staging guidance.
- Program monitoring and interventions summaries of interventions.
- *Carrying Out a State Regulatory Program*, National State Auditors Association, March 2004.

## Project Information

Audit fieldwork was conducted from January 2013 to May 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Kathy Aven, CIA, CFE (Project Manager)
- Kendra Shelton, CPA (Assistant Project Manager)
- Ashlee Jones, MAcy, CGAP, CFE
- Sarah Miller
- Bianca Pineda
- Michael C. Apperley, CPA (Quality Control Reviewer)
- John Young, MPAff (Audit Manager)



## Time Line of Events

Table 1 lists the significant milestones in the Texas Education Agency's (Agency) investigation of cheating allegations in the El Paso Independent School District (EPISD). Auditors compiled the information in Table 1 from information obtained from the Agency, EPISD, the U.S. Department of Education, media sources, and other individuals who had knowledge of the cheating schemes at EPISD.

Table 1

Time Line of the Agency's Investigation of EPISD			
Date	EPISD Action/Event	Agency Action/Event	Actions/Events of Others
January 2007		<ul style="list-style-type: none"> <li>The Agency released an investigative report on the integrity of the 2005 Texas Essential Knowledge and Skills (TEKS) tests at EPISD with no findings.</li> </ul>	
July 2009		<ul style="list-style-type: none"> <li>The Agency received an anonymous email complaint alleging the changing of student answers during the 2009 spring TAKS retesting. The Agency asserted that it did not have the necessary information to evaluate the claims.</li> </ul>	<ul style="list-style-type: none"> <li>A former member of the EPISD board of trustees told auditors he wrote to the Agency in July 2009 to express concerns that students at Bowie and Jefferson high schools were prevented from taking the TAKS tests.</li> </ul>
November 2009	<ul style="list-style-type: none"> <li>An EPISD employee told auditors she contacted the Agency's Student Assessment and Office of Inspector General divisions in November 2009 to report questionable practices at EPISD.</li> </ul>	<ul style="list-style-type: none"> <li>The Agency received an anonymous complaint via email alleging that EPISD administrators were eliminating special populations to meet adequate yearly progress targets and changing student grades to improve graduation rates. The Agency asserted that it did not have the necessary information to evaluate the claims.</li> </ul>	
May 2010			<ul style="list-style-type: none"> <li>An elected official from the El Paso area submitted written complaints to the U.S. Department of Education dated May 19, 2010. A copy of the letter was sent to EPISD.</li> </ul>
June 2010	<ul style="list-style-type: none"> <li>The EPISD Internal Audit Department began an audit of transcript irregularities at Bowie High School.</li> </ul>	<ul style="list-style-type: none"> <li>The Agency participated in a conference call with EPISD to discuss EPISD's internal audit of transcript irregularities at Bowie High School. The Agency's deputy commissioner of school district leadership and educator quality also made additional phone calls to individuals at EPISD.</li> <li>The Agency received an anonymous complaint via email asking the Agency to revisit the possibility that the elected official is correct and recommending that the Agency interview teachers and counselors in EPISD.</li> </ul>	

Time Line of the Agency's Investigation of EPISD			
Date	EPISD Action/Event	Agency Action/Event	Actions/Events of Others
July 2010		<ul style="list-style-type: none"> <li>The Agency began its investigation of EPISD based on directives from the U.S. Department of Education.</li> </ul>	<ul style="list-style-type: none"> <li>The U.S. Department of Education directed the Agency to investigate cheating allegations received from the elected official.</li> <li>The elected official sent a second complaint dated July 20, 2010, directly to the Agency that expanded his previous allegations related to TAKS cheating methods at EPISD.</li> <li>The elected official argued to the U.S. Department of Education and the Agency that the Agency should not perform the investigation.</li> </ul>
August 2010	<ul style="list-style-type: none"> <li>The EPISD Internal Audit Department completed its audit of transcript irregularities at Bowie High School; however, the written report remained in draft form.</li> </ul>	<ul style="list-style-type: none"> <li>The Agency withdrew the elected official's July 20, 2010, complaint from its investigative process.</li> </ul>	<ul style="list-style-type: none"> <li>The U.S. Department of Education directed the Agency to investigate the elected official's July 20, 2010, complaint that the Agency had withdrawn from its investigative process.</li> </ul>
September 2010		<ul style="list-style-type: none"> <li>The Agency released a letter of findings dated September 20, 2010, in response to the elected official's May 19, 2010, complaint based on a desk review. The Agency cleared EPISD of all cheating allegations.</li> </ul>	<ul style="list-style-type: none"> <li>The elected official appealed to the U.S. Department of Education regarding the Agency's September 20, 2010, letter of findings.</li> </ul>
October 2010		<ul style="list-style-type: none"> <li>The Agency released a letter of findings dated October 8, 2010, in response to the elected official's July 20, 2010, complaint based on a desk review. The Agency cleared EPISD of all cheating allegations.</li> </ul>	<ul style="list-style-type: none"> <li>The elected official appealed to the U.S. Department of Education regarding the Agency's October 8, 2010, letter of findings.</li> <li>A former EPISD administrator reported to the Agency program monitoring staff that certain other EPISD administrators had forged documents at Bowie High School and warned the Agency that those administrators filtered information EPISD provided to the Agency.</li> </ul>
December 2010			<ul style="list-style-type: none"> <li>The U.S. Department of Education's Office of Inspector General announced it would begin its own audit of EPISD.</li> </ul>
May 2011	<ul style="list-style-type: none"> <li>EPISD completed its written report on its audit of transcript irregularities at Bowie High School.</li> </ul>		
June 2011		<ul style="list-style-type: none"> <li>The Agency participated in an exit conference with the U.S. Department of Education via conference call to discuss the U.S. Department of Education's preliminary audit findings.</li> </ul>	<ul style="list-style-type: none"> <li>The U.S. Department of Education held an exit conference to share its preliminary audit findings with EPISD and the Agency.</li> </ul>
August 2011	<ul style="list-style-type: none"> <li>The Federal Bureau of Investigation arrested EPISD's superintendent for steering a no-bid contract to an acquaintance.</li> </ul>		

Time Line of the Agency's Investigation of EPISD			
Date	EPISD Action/Event	Agency Action/Event	Actions/Events of Others
April 2012		<ul style="list-style-type: none"> <li>The Agency participated in a second exit conference with the U.S. Department of Education via conference call to discuss the U.S. Department of Education's audit findings.</li> </ul>	<ul style="list-style-type: none"> <li>The U.S. Department of Education held a second exit conference with EPISD and the Agency to discuss its audit findings.</li> <li>The <i>El Paso Times</i> obtained a copy of the EPISD's internal audit report of transcript irregularities through a public information request.</li> </ul>
May 2012	<ul style="list-style-type: none"> <li>EPISD provided the Agency with a copy of its internal audit report identifying transcript irregularities at Bowie High School.</li> </ul>		
June 2012	<ul style="list-style-type: none"> <li>The EPISD superintendent pleaded guilty to two counts of conspiracy to commit mail fraud.</li> </ul>		
August 2012		<ul style="list-style-type: none"> <li>The Agency sanctioned EPISD under Texas Education Code, Chapter 39, by lowering EPISD's accreditation status, appointing a monitor to report on the actions of EPISD, and requiring EPISD to acquire professional services to address deficiencies.</li> </ul>	
September 2012		<ul style="list-style-type: none"> <li>Governor Perry appointed a new commissioner of education. The previous commissioner of education had served from July 2007 through July 2012.</li> </ul>	
December 2012	<ul style="list-style-type: none"> <li>EPISD's board of trustees requested a record review to appeal the Agency's appointment of a board of managers to replace the elected board of trustees.</li> </ul>	<ul style="list-style-type: none"> <li>The Agency increased EPISD's sanctions by appointing a board of managers to replace the board of trustees and oversee EPISD and elevating the monitor's role to conservator until the board of managers was installed.</li> </ul>	
February 2013	<ul style="list-style-type: none"> <li>EPISD's board of trustees attended a hearing in Austin to challenge the Agency's decision to replace the elected board of trustees with an appointed board of managers.</li> </ul>		
April 2013			<ul style="list-style-type: none"> <li>Weaver and Tidwell, LLP issued its final report on its investigation of EPISD's cheating scandal to EPISD.</li> <li>The U.S. Department of Education released a draft audit report to the Agency and EPISD.</li> </ul>

## Comparison of EPISD Investigation to Other Recent Agency Investigations

The Texas Education Agency (Agency) has conducted several investigations of alleged manipulation of federal accountability data since 2010. Auditors compared the investigation processes the Agency used to investigate the allegations and identified significant differences in the investigative approaches, procedures, and outcomes (see Table 2).


Table 2

Summary of the Agency's Investigations of Alleged Manipulation of Accountability Data Conducted from 2009 through 2013				
	Winfrey Academy Charter Schools	El Paso Independent School District (EPISD)	Canutillo Independent School District	San Elizario Independent School District
Location	Dallas County	El Paso County	El Paso County	El Paso County
School district/school enrollment	1,506	63,210	6,068	4,158
Reason for investigation	Complaint received in November 2008 alleging manipulation of student populations and misappropriation of school property and funds.	U.S. Department of Education directives received in July and August 2010 to investigate alleged manipulation of student populations.	School district self-report on the results of an internal investigation provided to the Agency in December 2012. The investigation identified actual manipulation of student populations.	Complaint received in January 2013 alleging manipulation of student populations.
Type of investigation	Special accreditation investigation conducted on site.	No Child Left Behind complaint investigation conducted as a desk review.	Special accreditation investigation conducted onsite.	No Child Left Behind complaint investigation conducted as a desk review.
Description of investigation procedures	The Agency reviewed information provided by the complainant, the Agency's contractor for assessment services, and relevant Agency records. It also made inquiries of school administrators. The investigation was conducted in conjunction with a comprehensive, onsite audit of program compliance, student attendance, federal awards, and fiscal management.	The Agency reviewed information provided by the school district, a local elected official, and relevant Agency records.	The Agency reviewed the school district's internal investigation report and relevant Agency records. It also interviewed school district staff and parents.	The Agency reviewed the school district's locally procured external investigation report that was provided to the Agency in March 2013. It also reviewed information the complainant and school district provided and relevant Agency records. The Agency also conducted phone interviews and disseminated a questionnaire to school district staff.

Summary of the Agency's Investigations of Alleged Manipulation of Accountability Data Conducted from 2009 through 2013				
	Winfree Academy Charter Schools	El Paso Independent School District (EPISD)	Canutillo Independent School District	San Elizario Independent School District
Summary of results	The charter school did not administer the 10th grade accountability test to students enrolled in the 10th grade during spring 2009. As a result, the school's federal accountability rating was based on inaccurate data.	The information submitted did not contain sufficient information to substantiate the allegations.	A former high school principal directed the manipulation of the limited English proficiency student subpopulation during the 2009-2010 and 2010-2011 school years to improve the school district's federal accountability rating.	The school district reclassified 10th grade students during the 2008-2009 and 2009-2010 school years, which prevented a number of limited English proficiency students from taking the 10th grade accountability test. However, the reclassifications were in accordance with school district regulations, and there was not sufficient evidence to conclude that the regulations were intended to improve the school district's federal accountability rating.
Enforcement action	Referred the complaint and preliminary report to the U.S. Department of Education and the Dallas County District Attorney's Office in October 2012 and December 2012, respectively. The Agency assigned a monitor to Winfree Academy Charter Schools in May 2013 based on fiscal management concerns. No action was taken against holders of educator certificates.	The Agency took no enforcement actions or made any referrals until August 2012, when the Agency lowered EPISD's accreditation status, appointed a monitor, and required EPISD to acquire professional services based primarily on the superintendent's guilty plea to federal charges. Five educator certification cases were opened and remained in suspense as of May 2013. The former superintendent's certification was automatically revoked because he was in prison.	The Agency recommended corrective action to the Canutillo Independent School District. It referred its findings to the U.S. Department of Education in May 2013. Two educator certification cases were opened. One case remained in suspense as of May 2013 and the other was referred to the Agency's Legal Division for review. The Agency referred information about one individual who altered student transcripts to the district attorney.	The Agency recommended corrective action to San Elizario Independent School District. It referred its findings to the U.S. Department of Education in May 2013. No action was taken against holders of educator certificates.
Investigation time period	March 2010 through December 2012	July 2010 through October 2010	December 2012 through March 2013	January 2013 through May 2013
<sup>a</sup> School district enrollment is from the Agency's <i>Texas Education Directory</i> and is as of October 2012.				

## ***Elected Official's Appeal Letter to U.S. Department of Education***

Below is the letter from the elected official in the El Paso area to the U.S. Department of Education appealing the Texas Education Agency's letter of findings dated October 8, 2010, regarding the investigation of cheating in the El Paso Independent School District.

  
**The Senate of the State of Texas**

**COMMITTEES:**  
Health and Human Services  
Nominations  
Transportation and Homeland Security  
Veterans Affairs & Military  
Installations - Vice Chair  
Subcommittees on Base Realignment  
and Closure - Chair

**Senator Eliot Shapleigh**  
District 29

October 20, 2010

**MAIN DISTRICT OFFICE:**  
800 Wyoming Ave., Suite A  
El Paso, Texas 79902  
915/544-1990  
Fax: 915/544-1908

**EASTSIDE DISTRICT OFFICE:**  
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El Paso, Texas 79936  
915/857-4000  
Fax: 915/857-4654

**CAPITOL OFFICE:**  
201 Box 12068  
Austin, Texas 78711  
512/463-0129  
Fax: 512/463-0218  
Dist 711 For Relay Calls  
e-mail: eliot.shapleigh@senate.state.tx.us

Ms. Patricia McKee  
Acting Director  
Student Achievement and School Accountability  
U. S. Department of Education  
400 Maryland Avenue, SW; 3W106  
Washington, DC 20202-6132

VIA U.S. POSTAL MAIL AND ELECTRONIC MAIL

RE: U.S. Dept. of Education Reference No. 06101487—Texas Education Agency's October 8,  
2010 Letter of Findings


Dear Director McKee:

We are in receipt of the Texas Education Agency (TEA)'s Letter of Findings, which was submitted to your office on October 8, 2010 (USDOE Control # 10-147797). I write to you today to appeal TEA's Letter of Findings regarding their investigation of El Paso Independent School District (EPISD) and its compliance with the school accountability requirements of the *No Child Left Behind* (NCLB) Act and the Texas Education Code.

TEA's investigation of the allegations was limited to a "desk review" of information submitted by EPISD and their own agency records. Although our office provided TEA with information from various individuals employed by EPISD, the agency did not contact a single person. However, this did not stop TEA from finding "[b]ased on the documentation submitted for this investigation, there is insufficient evidence to substantiate the allegations raised in the July 20, 2010 complaint. There is no indication that one or more Bowie HS students were prevented the opportunity to attend school and participate in statewide testing. This investigation report does not find areas of non-compliance with regard to NCLB requirements associated with AYP at Bowie HS."

As we have stated repeatedly to you and other staff at the U.S. Department of Education, out here, we have no trust in TEA. Despite the numerous witness statements that our office submitted to TEA, TEA did not once contact our office to obtain witnesses' names or the

1-800-544-1990



additional information that many witnesses would have readily given to an investigating authority. Remarkably, TEA did not even talk to any of the truant officers who went door-to-door in March 2008 to keep students away from TAKS testing at Bowie HS, or the teachers who told us about forged attendance records. Yet, TEA concluded that no students at Bowie HS were prevented from attending school or taking the TAKS exam.

Notably, stating that these allegations were "within the authority of EPISD to address through its local board policies," TEA refused to investigate the following allegations:

- use of INOVA or any data in creating student profiles;
- retention, student advancement, or classification of individual students;
- coursework assignments, credit recovery, or the assignment of student grades; and
- student attendance and trancies.

Instead, TEA chose to severely limit the scope of their investigation to Bowie HS students' attendance/participation in TAKS during the 2007-08 school year. Even then, specific complaints regarding online programs, altered student transcripts, and violations of test security/confidentiality are summarily dismissed by TEA on the basis that the information submitted by our office did not "describe specific instances or circumstances" and that TEA had no record of formal complaints related to each allegation (see pages 4-6 of TEA's Letter of Findings).

We strongly disagree with TEA's reasoning. First, our office provided numerous witness statements to TEA that described specific instances of many of our complaints (e.g., truant officers visiting students' homes). These are the same statements that we have provided the USDOE and were the subject of recent conference calls with the Region VI Inspector General and his staff.

Second, many of the witnesses spoke to our office on the condition of anonymity due to concerns of retaliation. As such, the majority of the witness statements were redacted to ensure the identities of individuals were only revealed to investigating authorities. However, had TEA requested the identities of any of these witnesses, we would have been more than willing to make arrangements for the witnesses to speak to the agency directly.

Third, many of the witnesses that contacted our office during the last six months cite fear of retaliation as the main reason for not filing official complaints. The fact that no formal complaints were filed with TEA does not make any of these complaints less legitimate or unworthy of an investigation—or at the very least, a follow-up phone call.

As we have stated from the start, we need an investigation and corrective action from the U.S. Department of Education because Texans cannot rely on TEA to conduct a thorough, comprehensive investigation.

In sum, I write to appeal the TEA's October 8, 2010 Letter of Findings, and I again ask the U.S. Department of Education to conduct an objective, independent investigation of the facts

Ms. Patricia McKee  
October 20, 2010  
Page 3 of 3

to determine what violations have occurred at EPISD as well as TEA, and what remedies will best address what we believe is the systemic denial of equal access to a quality education by a protected class of El Paso students.

We look forward to your response.

Very truly yours,

A handwritten signature in black ink that reads "Eliot Shapleigh". The signature is written in a cursive, slightly slanted style.

Eliot Shapleigh

ES/sjs

cc: Keith M. Maddox (Regional Inspector General for Audit, Region VI, USDOE), Taylor August (Director, Office for Civil Rights, Region VI, USDOE), Dr. Lorenzo Garcia (Superintendent, EPISD)

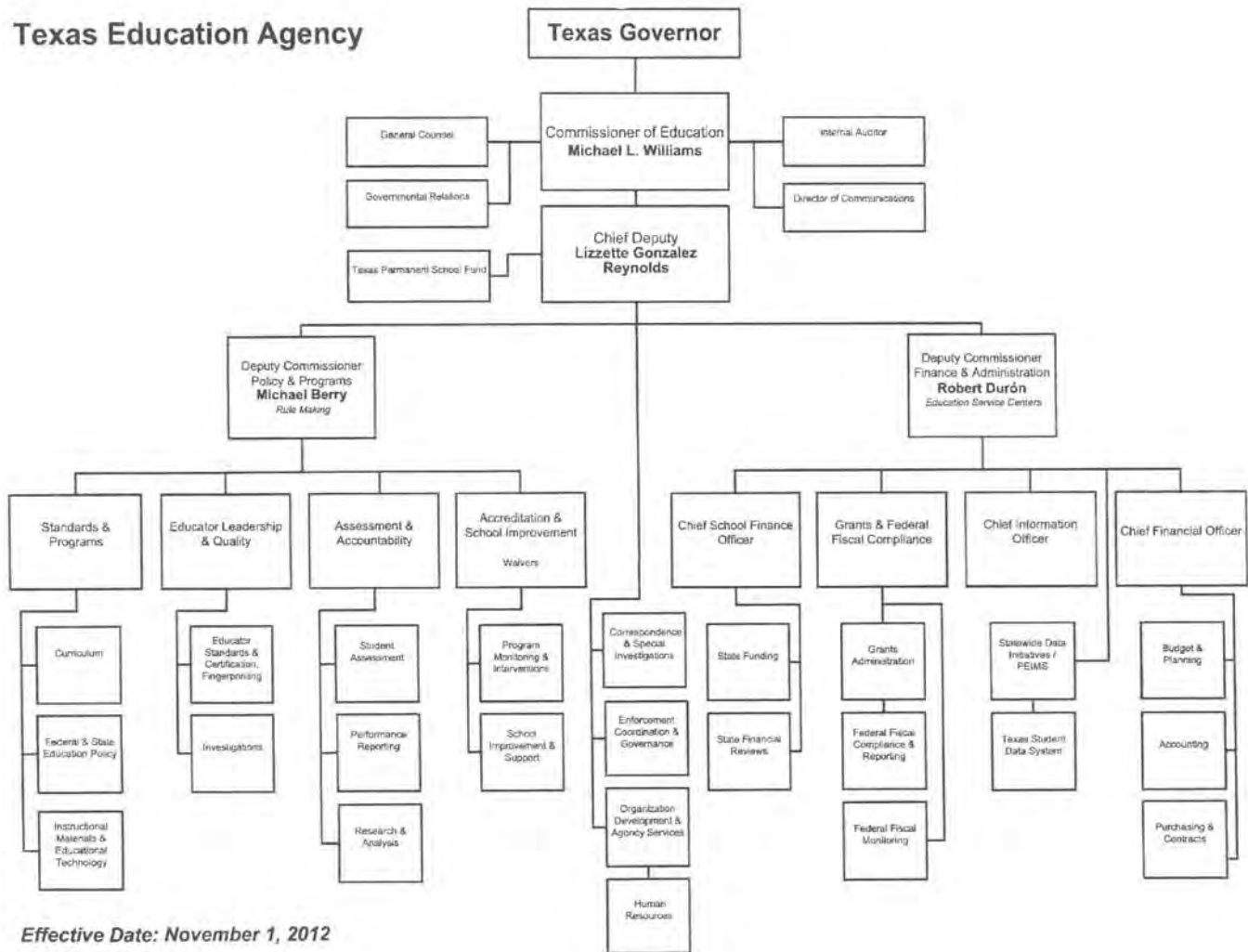


## The Agency's Organization Chart

Figure 1 shows the Texas Education Agency's (Agency) organization chart as of November 1, 2012.

Figure 1

### The Agency's Organization Chart as of November 1, 2012



Source: The Agency.

## Texas Education Agency's Management Response



1701 North Congress Ave. • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • [www.tea.state.tx.us](http://www.tea.state.tx.us)

August 22, 2013

State Auditor's Office  
ATTN: Ms. Kathy Avens  
P.O. Box 12067  
Austin, Texas 78781-2067

This letter is in response to the State Auditor's Office (SAO) final draft audit report of findings and recommendations concerning the Texas Education Agency's (Agency) investigation of the El Paso Independent School District in 2010.

The Agency appreciates the insights the report provides regarding the overall management oversight and processes concerning school accountability investigations, and would like to thank the SAO audit team for the courtesy extended to Agency staff during the audit process.

I am especially appreciative of State Auditor John Keel's decision to move forward with this review, at my request. Though not originally part of SAO's scheduled audits for 2013, this review was important to TEA and the people of El Paso in order to understand what occurred in 2010 – and learn how we can prevent such missteps from occurring again.

Attached are the Agency's written responses, which include actions that the Agency has taken or will be implementing in response to the recent audit. As reflected in the response, the Agency remains committed to addressing all concerns noted in the audit. If you have any questions or require further information, please contact Emi Johnson at (512) 463-9342 or [emi.johnson@tea.state.tx.us](mailto:emi.johnson@tea.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Williams".

Michael Williams  
Commissioner of Education  
Texas Education Agency

Sincerely,

A handwritten signature in black ink, appearing to read "Lizzette González-Reynolds".

Lizzette González-Reynolds  
Chief Deputy Commissioner  
Texas Education Agency

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#### Management Response

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#### Recommendation 1 | Management Oversight and Organization

TEA should:

- A. Create an office of complaints, investigations, and school accountability to accept complaints, screen complaints for materiality and substance and investigate complaints approved by the senior executive officer.
- B. Appoint a senior executive officer to oversee the new office of complaints, investigations, and school accountability. That senior executive officer should be required to:
  1. Provide written approval of decisions to not investigate complaints regarding school accountability.
  2. Ensure that all complaints determined to be outside TEA's investigative authority are referred to external authorities as appropriate.
  3. Review and approve its investigation policies and procedures to provide consistent investigation processes.
  4. For each investigation, review and provide written approval of:
    - i. The scope and specific planned investigative procedures.
    - ii. The investigation's findings.
    - iii. Draft investigative reports.

**Management Response:** Management agrees with the recommendation.

The agency will restructure itself to create an investigations office to accept and screen complaints for materiality and substance and investigate complaints approved by the appointee. This office will conduct investigations into school accountability, alleged educator misconduct, and potential misappropriation of state and federal funds. The agency will appoint an individual at a senior management level to oversee, review, and approve school investigations and school accountability as recommended under B (above). The appointee will have substantial experience in investigations, audits, and enforcement.

Timeline: October 1, 2013

Person Responsible: Commissioner's Office and Appointee

- C. Require the general counsel to provide written approval for all determinations that a complaint is outside TEA's investigative authority.

**Management Response:** Management agrees with this recommendation.

The agency appointee overseeing the investigations office will develop written guidelines for approval for all legal determinations that a complaint is outside the agency's investigative authority and provide guidance with regard to referring matters not within the agency's jurisdiction to appropriate agencies.

Timeline: October 1, 2013

Person Responsible: Appointee

- D. Ensure the office of complaints, investigations, and school accountability has sufficient resources including staff, travel budget, and training to conduct comprehensive investigations of noncompliance with school accountability requirements.

**Management Response:** Management agrees with this recommendation. The agency will evaluate the resources and training needed to conduct comprehensive investigations of noncompliance with school accountability requirements.

Timeline: October 1, 2013 and on-going  
Person Responsible: Appointee

## **Recommendation 2 | Complaint Processing and Tracking**

TEA should:

- A. Modify its policies so that it accepts anonymous complaints related to school accountability.

**Management Response:** Management agrees with this recommendation. The agency modified its procedures to accept anonymous complaints concerning falsification or misrepresentation of information used for school accountability, confidentiality and test security, and misappropriation of state or federal funds. In addition, the procedures describe the circumstances for which the agency shall accept anonymous complaints. The agency has recently drafted rules, to include these procedures, for adoption in Texas Administrative Code.

Timeline: Implemented  
Person Responsible: Emi Johnson, Special Investigations

- B. Establish an effective automated complaint tracking system that facilitates TEA's ability to accept, screen, review, and track complaints and require all TEA divisions to use that same complaint tracking system.

**Management Response:** Management agrees with this recommendation. In November 2007, the agency initiated an information technology project to establish an agency-wide automated complaint tracking system to meet this need. The project was not able to be completed due to budget constraints and resource limitations. Until adequate resources become available, the agency will continue to identify and perform enhancements to the existing electronic tracking system to support its manual process and require all TEA divisions to use the same system.

Timeline: As resources become available  
Person Responsible: Appointee

- C. Analyze the nature and volume of complaints TEA receives to identify trends and patterns related to noncompliance with student accountability requirements.

**Management Response:** Management agrees with the recommendation. The agency will analyze the nature and volume of complaints received in fall and spring

of each year to identify trends and patterns related to noncompliance with student accountability requirements.

Timeline: December 2013 and on-going  
Person Responsible: Emi Johnson, Special Investigations

### **Recommendation 3 | Monitoring and Data Analysis**

TEA should:

- A. Analyze data maintained by TEA to identify potential systemic cheating designed to circumvent federal accountability requirements, such as analyzing anomalies in student grade progression and No Child Left Behind sub-populations at the school and district levels.

**Management Response** Management agrees with this recommendation. TEA will use information from annually conducted erasure analyses to supplement information collected by other divisions within the agency to identify campuses where monitoring or other follow-up might be warranted. Additionally, in light of the state's new assessment and accountability systems, the agency will review and analyze its existing data validation analyses and internal controls in the fall of 2013 to determine whether they are appropriate for the new systems or whether other types of analyses and internal controls are needed. It is likely these activities will be ongoing for the next several years as additional components are added to the accountability system and as changes are made to the state assessment system as a result of legislation passed during the most recent Texas legislative session.

Timeline: Fall 2013, and on-going  
Person Responsible: Criss Cloudt, Assessment and Accountability Department

- B. Include risks identified through data analysis, monitoring observations, or complaint allegations in its risk assessment process for selecting school districts and charter schools for monitoring reviews.

**Management Response** Management agrees with the recommendation. The agency will use relevant data identified through data analysis, monitoring observations, or complaint allegations in its process for selecting school districts and charter schools for monitoring reviews. Coordination across divisions will allow for relevant data to be considered.

Timeline: Fall 2013, and on-going  
Person Responsible: Sally Partridge, Accreditation Department

### **Recommendation 4 | Policies and Procedures**

TEA should:

- A. Develop and implement written policies and procedures for its investigative processes. Those policies and procedures should:

1. Follow professional standards in performing its investigations, such as the *Principles and Standards for Offices of Inspector General* or generally accepted government auditing standards.
  2. Establish documented criteria to determine whether to conduct the investigation onsite or as a desk review.
  3. For complaints accepted for investigation, require investigators to contact and interview individuals identified in the complaint.
  4. Require TEA to assess and verify the information (including data and documentation) that it intends to use as evidence for investigative findings.
  5. Require investigators to assess the sufficiency, validity, and objectivity of audits and investigations that school districts and charter schools perform.
- B. Require its investigators to follow-up on the status of local audits and investigations at districts and charter schools.
- C. Require investigators to maintain a comprehensive file for each investigation and retain documentation to support its decisions regarding the investigation.

**Management Response:** Management agrees with this recommendation. The agency has revised its complaint investigation policies and procedures recommended under A (1-5), B, and C (described above). In addition, the agency has drafted proposed Texas Administrative Code (TAC) rules for complaint investigation procedures, including the criteria, standards, and procedures for the conduct of investigations based on the *Principles and Standards for Offices of Inspector General*, *Association of Certified Fraud Examiner* principles, and other regulatory agencies.

Timeline: Implemented  
 Person Responsible: Emi Johnson, Special Investigations

#### **Recommendation 5 | Communication**

TEA should:

- A. Require the senior executive officer that oversees the new office of complaints, investigations, and school accountability to submit a report on completed investigations to the Governor's Office and substantive legislative committees.

**Management Response:** Management agrees with this recommendation. The agency will establish a process to inform the Governor's Office and members of the Texas Legislature of agency investigations. The agency will report its completed investigations through a quarterly report and provide additional information, as requested.

Timeline: Fall 2013 and on-going  
 Person Responsible: Appointee

- B. Develop a process to facilitate the sharing of monitoring information across TEA divisions before and during investigations to ensure that investigations benefit from the knowledge and professional judgment of experienced staff.

**Management Response:** Management agrees with this recommendation. The agency has established a process to facilitate the sharing of monitoring information before and during investigations and monitoring visits. Monitoring information is shared across agency divisions through its Interventions Stage and Activity Manager (ISAM), an application that holds district profiles of interventions, indicators and reports of school performance, data validation, and No Child Left Behind (NCLB).

Timeline: Implemented

Person Responsible: Sally Partridge, Accreditation Department

- C. Establish an internal hotline and email address to allow TEA employees to anonymously report concerns about violations of school accountability

**Management Response:** Management agrees with this decision. The agency has established an internal hotline and email address to allow TEA employees to anonymously report concerns about violations of school accountability.

Timeline: Implemented

Person Responsible: Emi Johnson, Special Investigations

- D. Ensure that its Web page clearly directs how parents, teachers, school district employees, and members of the general public can report to TEA issues related to school accountability.

**Management Response:** Management agrees with this recommendation. The agency's public website was updated to include information and guidance to assist individuals in filing complaints concerning school accountability.

Timeline: Implemented

Person Responsible: Communications Division



## ***Related State Auditor's Office Work***

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Related State Auditor's Office Work		
Number	Product Name	Release Date
13-042	An Audit Report on Selected State Contracts at the Texas Education Agency	July 2013



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The Honorable Joe Straus III, Speaker of the House, Joint Chair

The Honorable Thomas “Tommy” Williams, Senate Finance Committee

The Honorable Jim Pitts, House Appropriations Committee

The Honorable Harvey Hilderbran, House Ways and Means Committee

### **Office of the Governor**

The Honorable Rick Perry, Governor

### **Texas Education Agency**

Mr. Michael Williams, Commissioner of Education



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